

FILED
KENNETH J. MURPHY
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DARLINGTON AMADASU
Plaintiff,

v.

JAMES DONOVAN, et al.
Defendants.

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§
§
§
§
§

Case Number: C-1-01-210

Judge Susan J. Dlott
Magistrate Judge Sherman

TEXAS DEFENDANTS' AMENDED
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

NOW COME the Defendants, University of Texas Health Science Center at San Antonio ("HSC"), Claudia S. Miller, and Roger Perales (collectively "Texas Defendants") and pursuant to the Federal Rules of Civil Procedure, deny each and every allegation contained in Plaintiff's First Amended Complaint, except those expressly admitted herein. The following specific admissions and denials correspond numerically to the paragraphs in Plaintiff's First Amended Complaint as follows:

PARTIES

1. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 1.
2. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 2.
3. The Texas Defendants are without sufficient knowledge of the Plaintiff's background to admit or deny the allegations contained in Paragraph 3.

4. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 4.

5. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 5.

6. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 6.

7. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 7.

8. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 8.

9. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 9

10. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 10.

11. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 11.

12. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 12.

13. Admit. She is employed in the Department of Family and Community Medicine.

14. Deny.

15. The Texas Defendants deny that the Health Science Center is "predominantly white" as that term is vague and ambiguous, and that AHEC is a part of the Health Science Center. However the Texas Defendants admit the remaining allegations in Paragraph 15.

JURISDICTION AND VENUE

16. This statement is jurisdictional in nature and does not require an admission or denial. No response required to Plaintiff's characterization of his causes of action; however, Texas Defendants contend that Plaintiff is neither justly or legally entitled to recover any relief for which he prays.

17. No response required to Plaintiff's characterization of the appropriate venue in this case.

FACTUAL ALLEGATIONS

18. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 18.

19. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 19.

20. Admit sentence one. The Texas Defendants are without sufficient knowledge to admit or deny the allegations in the second sentence.

21. The Texas Defendants deny informing Amadasu that accommodations are provided by STEER. The Texas Defendants admit that Miller informed Amadasu that if he did not have his own transportation, STEER would provide transportation to and from its facilities.

22. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 22.

23. Deny.

24. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 24.

25. Deny.

26. Deny.

27. Deny.

28. Deny.

29. Deny.

30. Deny.

31. The Texas Defendants admit that Amadasu volunteered his services at the health fair. The Texas Defendants are without sufficient information to admit or deny the truth of Plaintiff's statements that he intermingled with people of both sexes, and/or made new friends. The Texas Defendants deny that Perales was disruptive, interrupting, and/or controlling of Plaintiff. The Texas Defendants deny that Perales became jealous and/or unhappy for any reason with Plaintiff. The Texas Defendants deny that Perales expressed disfavor of any sort with Plaintiff, or made any racial slurs, epithets, and/or innuendoes.

32. Deny.

33. Deny.

34. Deny.

35. The Texas Defendants admit that Miller arrived in Laredo for a lecture around April 13, 2000. The Texas Defendants admit that Miller talked with Plaintiff about cancellation of the rotation. The Texas Defendants deny the remaining allegations of Paragraph 35.

36. Deny.

37. Deny.

38. Deny.

39. Deny.

40. Deny.

41. The Texas Defendants admit that Plaintiff's rotation was terminated early, and that he was notified of this fact by Miller over the telephone, but deny the remaining allegations in Paragraph 41.

42. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 42.

43. The Texas Defendants are without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 43.

44. The Texas Defendants are without sufficient knowledge to either admit or deny the allegations contained in the first sentence of Paragraph 44. The Texas Defendants deny threatening to evict the Plaintiff in the second sentence, but admit informing Plaintiff that the AHEC housing was only for active students. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in last sentence of Paragraph 44.

45. Deny.

46. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 46.

47. Deny.

48. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 48.

49. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 49.

COUNT 1

50. The Texas Defendants deny each and every statement contained in Paragraphs 1-49, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

51. The Texas Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 51.

52. Deny.

53. Deny.

COUNT 2

54. The Texas Defendants deny each and every statement contained in Paragraphs 1-53, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

55. Deny.

56. Deny.

COUNT 3

57. The Texas Defendants deny each and every statement contained in Paragraphs 1-56, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

58. Deny.

59. Deny.

COUNT 4

60. The Texas Defendants deny each and every statement contained in Paragraphs 1-59, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

61. Deny.

62. Deny.

COUNT 5

63. The Texas Defendants deny each and every statement contained in Paragraphs 1-62, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

64. Deny.

65. Deny.

COUNT 6

66. The Texas Defendants deny each and every statement contained in Paragraphs 1-65, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

67. Deny.

68. Deny.

COUNT 7

69. The Texas Defendants deny each and every statement contained in Paragraphs 1-68, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

70. Deny.

71. Deny.

COUNT 8

72. The Texas Defendants deny each and every statement contained in Paragraphs 1-71, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

73. Deny.

74. Deny.

COUNT 9

75. The Texas Defendants deny each and every statement contained in Paragraphs 1-74, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

76. Deny.

77. Deny.

COUNT 10

78. The Texas Defendants deny each and every statement contained in Paragraphs 1-77, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

79. Deny.

80. Deny.

COUNT 11

81. The Texas Defendants deny each and every statement contained in Paragraphs 1-80, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

82. Deny.

83. Deny.

COUNT 12

84. The Texas Defendants deny each and every statement contained in Paragraphs 1-83, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

85. Deny.

86. Deny.

COUNT 13

87. Deny.

COUNT 14

88. Deny.

89. Deny.

90. Deny.

COUNT 15

91. Deny.

**ADDITIONAL FACTUAL ALLEGATIONS OF CONTINUING DISCRIMINATION
AND VIOLATIONS**

92. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 92.

93. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 93.

94. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 94.

95. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 95.

96. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 96.

97. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 97.

98. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 98.

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99. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 99.

100. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 100.

101. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 101.

102. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 102.

103. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 103.

104. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 104.

105. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 105.

106. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 106.

107. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 107.

108. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 108.

109. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 109.

110. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 110.

111. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 111.

112. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 112.

113. No response required to Plaintiff's characterization of his causes of action.

Count 16

114. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 114.

115. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 115.

116. Deny.

117. Deny.

118. Deny.

119. Deny.

Count 17

120. The Texas Defendants deny each and every statement contained in Paragraphs 1-119, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

121. The Texas Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 121

122. Deny.

123. Deny.

124. Deny.

125. Deny.

126. Deny.

127. Deny.

Count 18

128. The Texas Defendants deny each and every statement contained in Paragraphs 1-127, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

129. The Texas Defendants are without sufficient information to admit or deny the allegations in Paragraph 129.

130. Deny.

131. Deny.

Counts 19-25

The Texas Defendants are not responding to Counts 19-25, paragraphs 132-154, pursuant to the Court's September 17, 2003 Order denying Plaintiff the right to join these claims.

Count 26

155. The Texas Defendants deny each and every statement contained in Paragraphs 1-131, except those they specifically admitted and those to which they could not respond for lack of information or knowledge.

156. Deny.

157. Deny.

158. Deny.

159. Deny.

Counts 27-43

The Texas Defendants are not responding to Counts 27-43, paragraphs 160-251, pursuant to the Court's September 17, 2003 Order denying Plaintiff the right to join these claims.

The Texas Defendants deny that Plaintiff is entitled to judgment in this case and/or that he is entitled to any of the requested relief in paragraphs (a) through (e).

**II.
AFFIRMATIVE DEFENSES**

The Texas Defendants hereby assert the following affirmative defenses to all claims to which they are applicable:

1. Defendant University of Texas Health Science Center at San Antonio is entitled to Eleventh Amendment Immunity from all federal claims to which that defense applies. *Wallace v. Texas Tech Univ.*, 80 F.3d 1042 (5th Cir.1996);

2. Defendant University of Texas Health Science Center at San Antonio is entitled to sovereign immunity from all Texas state law claims to which that defense applies. *Duhart v. State*, 610 S.W.2d 740 (Tex. 1980);

3. Defendants Miller and Perales are entitled to the defense of qualified immunity from all federal claims brought against them in their individual capacities, and to which that defense applies. *Harlow v. Fitzgerald*, 457 U.S. 800, 201 S.Ct. 2727 (1982);

4. Defendants Miller and Perales are entitled to the defense of official immunity from all Texas state law claims to which that defense applies. *University of Houston v. Clark*, 22 S.W.3d 915 (Tex.2000);

5. The Texas Defendants assert they would have taken the same actions regardless of Plaintiff's race and/or national origin.

6. The Texas Defendants assert that Plaintiff has failed to mitigate his damages;

7. The Texas Defendants assert that the Plaintiff's own conduct caused or contributed to any injuries the Plaintiff may have suffered;

8. Texas does not recognize a cause of action for "educational malpractice;"

9. Defendants Miller and Perales are entitled to the defense of qualified privilege to Plaintiff's claims of defamation, libel, and slander under Texas state law;

10. The Texas Defendants assert the defense of truth to all claims of defamation, libel and slander. *Randall's Food Mkts. V. Johnson*, 891 S.W.2d 640 (Tex.1995).

11. The Texas Defendants' actions would have been the same even in the absence of any protected speech or association by the Plaintiff. *Mt. Healthy Board of Education v. Doyle*, 429 U.S. 274, 287, 97 S.Ct. 568, 576 (1977).

12. The Texas Defendants assert that Plaintiff has failed to exhaust his administrative remedies.

13. The Texas Defendants assert the defense of statute of limitations to all claims to which that defense may apply;

14. The Texas Defendants assert that all state law claims in federal court are barred by the Eleventh Amendment.

15. The Texas Defendants reserve the right to add additional affirmative defenses as they become apparent.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendants, UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO, CLAUDIA S. MILLER, and ROGER PERALES, hereby pray that the Plaintiff take nothing by this suit, and that the Court grant to the Texas Defendants all costs of court associated with defending this action, and award such other and further relief as the Court deems appropriate.

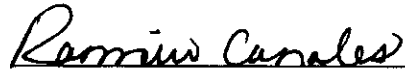
Respectfully submitted,

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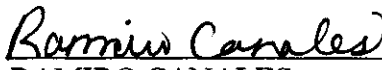
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent via certified mail, return receipt requested on the 1ST of October, 2003 to:

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